

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of)	
)	Transmittal Nos. 2470, 2489
Southwestern Bell Telephone Company)	
Tariff F.C.C. No. 73)	CC Docket No. 95-158
)	DOCKET FILE COPY ORIGINAL

**OPPOSITION OF INTERMEDIA COMMUNICATIONS OF FLORIDA, INC.
TO DIRECT CASE OF SOUTHWESTERN BELL TELEPHONE COMPANY**

Intermedia Communications of Florida, Inc. ("ICI"), by its undersigned counsel, hereby opposes Southwestern Bell Telephone Company's ("SWB") Direct Case filed pursuant to the Commission's *Order Initiating Investigation* of Transmittal No. 2470.

I. INTRODUCTION

ICI provides competitive interstate and intrastate switched access and private line services over state-of-the-art fiber ring networks in Jacksonville, Miami, Orlando, St. Petersburg, Tampa, West Palm Beach in Florida, in Cincinnati, Ohio and in Raleigh-Durham, North Carolina. ICI also has networks under development in Huntsville, Alabama and St. Louis, Missouri. As the oldest and largest competitive access provider ("CAP") in Florida, and as a recent entrant in other markets, ICI attempts to compete directly against the dominant local exchange carriers ("LECs"). ICI is deeply concerned that SWB's success in impeding the tariff review process will encourage other LECs to follow SWB's lead by likewise withholding virtual collocation cost support information on the pretext of protecting assertedly "proprietary" data. As ICI discusses below,

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SWB's obstructionist tactics are patently dilatory and flatly inconsistent with the Commission's rules requiring public disclosure of this type of data.

Accordingly, ICI welcomes the suspension of SWB's Transmittal No. 2470, which raises issues common to all LECs. By initiating an investigation as to the sufficiency of the cost support data for SWB's individual case basis ("ICB") offering, the Commission will receive the full benefit of public analysis and comment. The Commission, moreover, will establish precedent that will reduce the need for ad hoc regulation and restrict future opportunities for LEC gamesmanship of the type so routinely employed by SWB.

II. SWB'S DIRECT CASE PROVIDES NO JUSTIFICATION FOR WITHHOLDING VIRTUAL COLLOCATION COST DATA

In its Direct Case,^{1/} SWB argues that the cost support submitted with Transmittal No. 2470 is sufficient using two separate lines of argument. As ICI discusses below, however, neither argument provides any justification for withholding the cost support data submitted in SWB's Transmittal No. 2489.

A. The Nature of the Cost Support Filed By SWB in Other Tariff Filings is Irrelevant to the Instant Proceeding

SWB argues that Transmittal No. 2470 contains the same level of cost support provided for other SWB ICB arrangements that have taken effect, and concludes that this fact precludes the Commission from rejecting Transmittal No. 2470 for inadequate cost support. This conclusion is incorrect and the argument is irrelevant. The fact that a carrier-initiated tariff revision takes

¹*Matter of Southwestern Bell Telephone Co., Tariff F.C.C. No. 73, Transmittal Nos. 2470, 2489, Direct Case, CC Docket No. 95-158 (filed Oct. 27, 1995) ("Direct Case").*

effect does not constitute a finding by the Commission that the filing was reasonable, and does not in any way convey the Commission's imprimatur to the filing.

Moreover, SWB has not demonstrated that it would be irreparably harmed by the public release of its cost data, and no such demonstration is possible. Indeed, in another virtual collocation tariff filing, SWB simply withdrew its request for confidential treatment of Transmittal No. 2448, citing the desire to avoid delay in the effective date of SWB's filing and to satisfy the customers' contracted due date. Obviously, no irreparable harm resulted from the public review of that cost data. It is apparent that SWB presents no real argument for proprietary treatment of its virtual collocation cost data and that SWB will suffer no real harm by the release of its allegedly proprietary cost data. It is also apparent, however, that by withholding its cost support under the guise of protecting proprietary information, SWB succeeds in depriving both the Commission and affected parties of adequate review of its virtual collocation rates and charges.

B. By Withholding Cost Support Information for Transmittal No. 2470, SWB Undermines the Commission's Policy of Ensuring Public Access to Tariff Cost Support Data

The withholding of virtual collocation cost support data by SWB not only flouts the Commission's rules but it also defeats longstanding public policy permitting access to tariff cost support data provided to the Commission. As stated by the Bureau in a series of letter rulings on certain Freedom of Information Act ("FOIA") requests concerning virtual collocation cost support, there is a "compelling public interest in providing affected parties the maximum opportunity to

assess the lawfulness of a common carrier's rates."^{2/} The Bureau further observed that: "[w]e know of no case in which cost support data have been withheld in their entirety without affording some means for analysis, at least to the parties to the tariff review proceeding."^{3/} Similarly, with respect to collocation equipment, the Commission's *Virtual Collocation Order* requires SWB to furnish "specific rates for [interconnector] requested equipment" in its virtual collocation tariff.^{4/} This policy, consistent with past practice, permits the parties a critical opportunity to analyze the LEC's data and to assist the Commission in determining whether the proposed rates are reasonable. Without an opportunity to review such data, neither SWB's customers nor its competitors can have any assurance that they are being charged reasonable rates.

C. SWB Flagrantly Disregards the Commission's Policy On ICB Tariff Offerings

Contrary to SWB's assertion that further cost support is not required by the rules, the Commission has determined that carrier ICB offerings must satisfy the cost support showing

²See Letter from Kathleen M.H. Wallman, Chief, *Common Carrier Bureau*, to Jonathan E. Canis, Frank W. Krogh and Richard J. Metzger (Nov. 1, 1994), Freedom of Information Act Requests Control Nos. 94-310, 325, 328 (DA-94-1214); Letter from Kathleen M.H. Wallman, Chief, *Common Carrier Bureau*, to Jonathan E. Canis (June 6, 1995), Freedom of Information Act Request Control No. 95-151; Letter from Kathleen M.H. Wallman, Chief, *Common Carrier Bureau*, to John L. McGrew (Aug. 11, 1995), Freedom of Information Act Request Control No. 95-223.

³Letter from Kathleen M.H. Wallman, Chief, *Common Carrier Bureau*, to Jonathan E. Canis, Frank W. Krogh and Richard J. Metzger (Nov. 1, 1994), Freedom of Information Act Requests Control Nos. 94-310, 325, 328 (DA-94-1214)

⁴*Expanded Interconnection with Local Telephone Company Facilities*, CC Docket No. 91-141, FCC 94-190, ¶ 51 (released July 25, 1994) ("*Virtual Collocation Order*"). See also *Commission Requirements for Cost Support Material To Be Filed with Virtual Collocation Tariffs for Special Access and Switched Transport*, CC Docket No. 91-141, DA 94-819, ¶¶ 9-10 (released July 25, 1994) ("*Tariff Review Plan Order*").

required under Section 61.38 of the Commission's Rules.^{5/} The Bureau, moreover, recently issued a Public Notice in which it restated the Commission's policy on ICB tariff offerings specifically in order to address the problem of ICB tariff transmittals that are inconsistent with that policy.^{6/} The Notice expressly states that ICB filings must comply with the cost support requirements of Section 61.38.

Notwithstanding Commission precedent and the Bureau's recent and unequivocal enunciation of the Commission's policy on ICB tariff offerings, SWB in its Direct Case attempts to argue that the Commission previously declined to apply Section 61.38 requirements to ICB filings. SWB, however, conveniently disregards the fact that the Commission's exclusion of ICB arrangements from price cap regulation subjects ICBs to a *higher* evidentiary standard than that required under the price cap rules. The Commission has found ICBs to be inherently discriminatory and thus, has made clear that ICBs are subject to special scrutiny and are appropriate only in very limited circumstances.

As reiterated in the Notice, an ICB service offering is not unreasonably discriminatory so long as it conforms to certain specified standards: (1) it must be one that the carrier has not previously offered and that is not "like" any other current offering; (2) the ICB rate is an interim transitional measure; (3) the carrier makes the service generally available at averaged rates, which

⁵*Matter of Bell Atlantic Telephone Companies Transmittal Nos. 224 and 226 Revisions to Tariff 1*, 3 FCC Rcd 1621, 1622-23 (1988) (rejecting ICB offerings based upon failure to comply with § 61.38 cost showing requirement); *Matter of BellSouth Telephone Companies Transmittal No. 346 Revisions to Tariff F.C.C. No. 4*, 6 FCC Rcd 373, 374 (1991) (rejecting ICB offerings based upon failure to comply with § 61.38 cost showing requirement).

⁶*Common Carrier Bureau Restates Commission Policy on Individual Case Basis Tariff Offerings*, Public Notice, DA 95-2053 (released Sept. 27, 1995) ("Notice").

must be developed within a reasonable time; and (4) ICB cost support must comply with the requirements of Section 61.38 of the Commission's rules. Clearly, the exclusion of ICBs from price cap regulation does not constitute a departure from the Commission's rules nor does it provide a basis for avoiding compliance with Section 61.38 of the Commission's rules. Accordingly, SWB's argument that further cost support is not required must be rejected.

III. THE COMMISSION SHOULD ACT DECISIVELY TO HALT THE TREND IN LEC GAMESMANSHIP THAT CONTINUES TO OBSTRUCT THE TARIFF REVIEW PROCESS

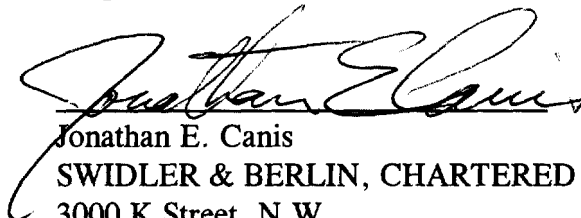
In the Commission's investigation of LEC virtual collocation rates in CC Docket No. 94-97, it is significant that initially, only SWB withheld its cost support data -- no other LEC protested this routine procedure of providing such data to the parties. Since then, however, Cincinnati Bell and Ameritech have followed SWB's lead by likewise withholding data in their Direct Cases. Like SWB, these LECs seek to make it impossible for affected parties to review the material in question and comment on their proposed rates on a timely basis. The Commission should neither condone nor tacitly encourage these attempts to shield critical information from public scrutiny and to foreclose interested parties from participating in the tariff review process. ICI urges the Commission to act swiftly to make virtual collocation cost support available to requesting parties. Any unnecessary delay will play directly into the hands of SWB and other LECs determined to eviscerate the Commission's tariff review process.

IV. CONCLUSION

ICI respectfully urges the Commission, in furtherance of its policies governing expanded interconnection, to ensure that the pending investigation of LEC virtual collocation rates and the tariff review process remain "open" processes where affected parties have ready access to the cost

support data necessary to assess the reasonableness of a LEC's proposed rates. To do so, the Commission must protect the "compelling public interest in providing affected parties the maximum opportunity to assess the lawfulness of a common carrier's rates."⁷ In addition, the Commission must enforce its policy on ICB offerings and the related cost support rules. As shown by the foregoing discussion, SWB failed to comply with the Commission's requirements in making available its cost support data for Transmittal No. 2470 and in its Direct Case presents no justification for flouting the tariff review process. For these reasons, the Commission must reject SWB's Direct Case and, therefore, Transmittal No. 2470.

Respectfully submitted,



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November 13, 1995

⁷See Letter from Kathleen M.H. Wallman, Chief, *Common Carrier Bureau*, to Jonathan E. Canis, Frank W. Krogh and Richard J. Metzger (Nov. 1, 1994), Freedom of Information Act Requests Control Nos. 94-310, 325, 328 (DA-94-1214); Letter from Kathleen M.H. Wallman, Chief, *Common Carrier Bureau*, to Jonathan E. Canis (June 6, 1995), Freedom of Information Act Request Control No. 95-151; Letter from Kathleen M.H. Wallman, Chief, *Common Carrier Bureau*, to John L. McGrew (Aug. 11, 1995), Freedom of Information Act Request Control No. 95-223.

CERTIFICATE OF SERVICE

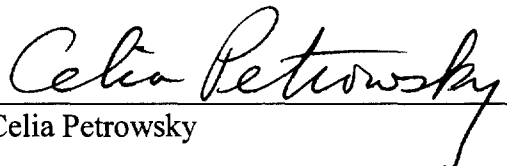
I hereby certify that on this 13th day of November 1995, copies of OPPOSITION OF INTERMEDIA COMMUNICATIONS OF FLORIDA, INC. TO DIRECT CASE OF SOUTHWESTERN BELL TELEPHONE COMPANY were served by hand delivery on the following:

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